

MONTANA LEGISLATIVE HISTORY

Chapter 51 19 89

Bill H 150 S _____ Original bill & history / C

H. Committee on Business & Economic De-
velopment

Hearing Date(s) Jan 19 ✓ C

_____ C

_____ C

_____ C

Date Out Jan 19 ✓ C

S. Committee on Business & Industry

Hearing Date(s) Jan 20 ✓ C

Feb 03 ✓ C

_____ C

_____ C

Feb 02 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HOUSE FINAL STATUS

1/26	COMMITTEE REPORT--BILL PASSED AS AMENDED	
1/28	2ND READING PASSED	83 10
1/31	3RD READING PASSED	86 11

TRANSMITTED TO SENATE
 2/02 REFERRED TO HIGHWAYS & TRANSPORTATION
 2/16 HEARING
 DIED IN COMMITTEE

HB 150 INTRODUCED BY JOHNSON, ET AL.
 REQUIRE FRANCHISE PROTECTION FOR SNOWMOBILE AND
 OFF-HIGHWAY VEHICLE DEALERS

1/13	INTRODUCED	
1/13	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT	
1/19	HEARING	
1/19	COMMITTEE REPORT--BILL PASSED AS AMENDED	
1/21	2ND READING PASSED	91 0
1/24	3RD READING PASSED	97 0

TRANSMITTED TO SENATE
 1/25 REFERRED TO BUSINESS & INDUSTRY
 1/27 HEARING
 2/06 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 2/10 2ND READING CONCURRED AS AMENDED 48 0
 2/13 3RD READING CONCURRED 50 0

RETURNED TO HOUSE WITH AMENDMENTS
 2/28 2ND READING AMENDMENTS CONCURRED 94 0
 3/01 3RD READING AMENDMENTS CONCURRED 97 0

3/03 SIGNED BY SPEAKER
 3/03 SIGNED BY PRESIDENT
 3/03 TRANSMITTED TO GOVERNOR
 3/07 SIGNED BY GOVERNOR
 CHAPTER NUMBER 51 EFFECTIVE DATE: 3/07/89

HB 151 INTRODUCED BY SWIFT, ET AL.
 ALLOW LIMITED BRANCH BANKING

1/13	INTRODUCED	
1/13	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT	
1/14	FISCAL NOTE REQUESTED	
1/18	HEARING	
1/20	FISCAL NOTE RECEIVED	
1/23	FISCAL NOTE PRINTED	
2/08	COMMITTEE REPORT--BILL PASSED AS AMENDED	
2/10	2ND READING PASSED	54 42
2/13	3RD READING PASSED	60 36

TRANSMITTED TO SENATE
 2/14 REFERRED TO BUSINESS & INDUSTRY
 3/06 HEARING
 3/08 COMMITTEE REPORT--BILL CONCURRED
 3/10 2ND READING CONCURRED 33 16
 3/13 3RD READING CONCURRED 32 17

RETURNED TO HOUSE
 3/21 SIGNED BY SPEAKER
 3/21 SIGNED BY PRESIDENT

HOUSE BILL NO. 150

INTRODUCED BY JOHNSON, TVEIT, GILBERT,
ABRAMS, BLAYLOCK, COHEN, WALLIN

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
	FIRST READING.
JANUARY 19, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 20, 1989	PRINTING REPORT.
JANUARY 21, 1989	SECOND READING, DO PASS.
JANUARY 23, 1989	ENGROSSING REPORT.
JANUARY 24, 1989	THIRD READING, PASSED. AYES, 97; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1989	PASS CONSIDERATION.
FEBRUARY 10, 1989	SECOND READING, CONCURRED IN AS AMENDED.
FEBRUARY 13, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

FEBRUARY 28, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 1, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *150*
2 INTRODUCED BY *Johnson* *Tracy* *Gilbert* *Thorn*
3 *Blaylock*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPURCHASE OF
5 THE INVENTORY OF CANCELED DEALERSHIPS IN MOTORCYCLES,
6 MOTOR-DRIVEN CYCLES, RECREATIONAL VEHICLES, QUADRICYCLES,
7 SNOWMOBILES, OFF-HIGHWAY VEHICLES, AND BOATS AND ENGINES;
8 AND AMENDING SECTION 30-11-701, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 30-11-701, MCA, is amended to read:

12 "30-11-701. Definitions. As used in this part, the
13 following definitions apply:

14 (1) "Current net price" means:

15 (a) with respect to a dealership contract, the price
16 listed in the wholesaler's, manufacturer's, or distributor's
17 price list or catalog in effect at the time a dealership
18 contract is discontinued or, if none is then in effect, the
19 last available price so listed; and

20 (b) with respect to a distribution contract, the price
21 listed in the manufacturer's or distributor's price list or
22 catalog in effect at the time a distribution contract is
23 discontinued or, if none is then in effect, the last
24 available price so listed.

25 (2) "Dealership contract" means a written contract

1 between a retailer and a wholesaler, manufacturer, or
2 distributor in which the retailer becomes a dealer in goods
3 sold by the wholesaler, manufacturer, or distributor,
4 evidenced by a franchise agreement, sales agreement,
5 security agreement, or other similar agreement or
6 arrangement.

7 (3) "Distribution contract" means a written contract
8 between a wholesaler and a manufacturer or distributor in
9 which the wholesaler becomes a dealer in goods sold by the
10 manufacturer or distributor, evidenced by a franchise
11 agreement, sales agreement, security agreement, or other
12 similar agreement or arrangement.

13 (4) "Inventory" means:

14 (a) farm implements, machinery, attachments, and
15 repair parts;

16 (b) industrial and construction equipment and repair
17 parts; and

18 (c) automobiles, trucks, and repair parts sold by an
19 automobile or truck dealer as defined in 61-1-314;

20 (d) motorcycles, motor-driven cycles, recreational
21 vehicles, and quadricycles, as those terms are defined in
22 Title 61, chapter 1, part 1, and repair parts;

23 (e) snowmobiles, as defined in 23-2-601, and repair
24 parts;

25 (f) off-highway vehicles, as defined in 23-2-801, and

1 repair parts; and

2 (g) vessels, as defined in 23-2-502, detachable motors
3 or engines used to propel vessels, and repair parts.

4 (5) "Net cost" means:

5 (a) with respect to a dealership contract, the price
6 actually paid for an inventory item by the retailer to the
7 wholesaler, manufacturer, or distributor, plus applicable
8 freight costs paid by or charged to the retailer; and

9 (b) with respect to a distribution contract, the price
10 actually paid for an inventory item by the wholesaler to a
11 manufacturer or distributor, plus applicable freight costs
12 paid by or charged to the wholesaler.

13 (6) "Retailer" or "retail dealer" means any
14 individual, partnership, association, or corporation engaged
15 in the business of selling inventory, as defined in this
16 section, to the general public.

17 (7) "Wholesaler" means any individual, partnership,
18 association, or corporation engaged in the business of
19 selling inventory, as defined in this section, to
20 retailers."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

Call to Order: By Bob Pavlovich, on January 19, 1989, at
9:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 129

Presentation and Opening Statement by Sponsor: Rep. Stang, District 52, stated that this bill was proposed by the Department of Justice, and what it does is to provide authority for cease and desist orders when there is reasonable cause to believe that the person is engaged in a business as a new motor vehicle manufacturer, distributor, or importer without being licensed by the department of justice. Every person or firm for commission or profit that engages in the business to buy and sell motor vehicles must be licensed. The department needs the authority to issue these cease and desist orders so that they can get these so-called car dealers off the street.

List of Testifying Proponents and What Group They Represent:

Bud Schoen, Motor Vehicles Division

List of Testifying Opponents and What Group They Represent:

None

Testimony: Mr. Schoen stated that his division's problems are with the unlicensed dealers. They buy wholesale

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members: There were a few questions from the committee which Mr. Schoen answered.

Closing by Sponsor: Rep. Stang stated that this was a pretty simple bill, that all it would do is to bring Montana in to compliance with the federal regulations.

HEARING ON HOUSE BILL 150

Presentation and Opening Statement by Sponsor: Rep. Johnson stated the bill amends 30-11-701, MCA, to require the repurchase of inventory from cancelled dealerships selling motorcycles, recreational vehicles, quadcycles, snowmobiles, off-highway vehicles, parts, boats, and engines. At the present time under that same code, farm implements, and parts, industrial and construction equipment and parts and automobiles and trucks and parts are subject to repurchase of the inventory by the manufacturer or wholesaler, if and when that dealership or franchise is withdrawn or cancelled. So, this bill adds the categories listed. It requires the manufacturer or wholesaler to repurchase the inventory from the dealership that loses his franchise or dealership. There is one amendment to this bill which all of you have a copy of that would provide for an immediate effective date and would add a new section on page 3 following line 20.

List of Testifying Proponents and What Group They Represent:

Marvin Holas, Glendive Sales Corp.
John Zaback, M & R Cycles, Sidney
Mike Sherwood, MTLA
Harvey K. Markegard
Mark Bretz
Dave Bliss
Bonnie Tippy
Ed Leipheimer
Ken Hoovestol, Montana Snowmobile Assoc.
Bob's Cycle World, Havre

List of Testifying Opponents and What Group They Represent:

None

Testimony: See the attached copies of testimony.

Questions From Committee Members: There were questions from the committee which Mr. Hoovestol, Mr. Zaback and Leipheimer answered.

Closing by Sponsor: Rep. Johnson stated that even though instigation for this bill came from Mr. Holas of the Glendive area, it is a statewide thing because we have people here from all over the state, who are in agreement that this legislation is needed to protect the small business person. I think a part of our charge as the Business and Economic Development committee is to see that we help and retain small businesses in our state, to further economic development.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 129

Motion: Rep. Hansen moved a DO PASS.

Discussion: Rep. Kilpatrick moved an amendment for the effective date to be July 1, 1989.

Amendments and Votes: The amendment was passed unanimously.

Recommendation and Vote: HB 129 as amended passed unanimously.

DISPOSITION OF HOUSE BILL 130

Motion: Rep. Thomas made a DO PASS motion.

Discussion: None

Amendments and Votes: Rep. Johnson moved DO PASS as amended.

Recommendation and Vote: HB 130 as amended passed unanimously.

DISPOSITION OF HOUSE BILL 150

Motion: Rep. Johnson moved a DO PASS as amended.

Discussion: None

Amendments and Votes: Passed unanimously.

Recommendation and Vote: HB 150 passed unanimously.

ADJOURNMENT

Adjournment At: 9:45 a.m.


REP. BOB PAVLOVICH, Chairman

EP/sp
1603.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1 19 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE _____

11/9/89

BILL NO.

HP 150

NUMBER

[illegible]

TALLY

16

Sue Pennington
Secretary

Bob Paylovich
Chairman

MOTION: Rep. Johnson moved a DO PASS as amended
passed as amended

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 150 (first reading copy -- white) do pass as amended.

Signed: Robert Pavlovich
Robert Pavlovich, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3.

Following: line 20

Insert: "NEW SECTION. SECTION 2. Effective date. This act is effective upon passage and approval."

HVB 15
#1
140/18

MARVIN HOLAS
GLEN DIVE SALES CORP D.B.A. HOLAS MID AMERICA SPORT CENTER
GLEN DIVE, MONTANA

PROPONENT

OUR PROBLEMS AS A MOTORCYCLE, SNOWMOBILE AND ATV DEALER ARE VERY SIMILAR TO THE FRANCHISE PROBLEMS THAT AUTOMOBILE AND TRUCK DEALERS HAD WHEN THEIR FRANCHISE AGREEMENTS WERE TERMINATED OR CANCELLED BY A MANUFACTURER OR DISTRIBUTOR. FRANCHISE AGREEMENTS ARE DRAFTED FOR A MANUFACTURER OR DISTRIBUTOR BY THEIR LEGAL COUNSEL AND ARE ONE SIDED FOR THE MANUFACTURER OR DISTRIBUTOR. THE DEALER DOES NOT HAVE EQUAL BARGAINING POWER AND THEREFORE, NEEDS THE FRANCHISE PROTECTION OFFERED IN SECTION 30-11-701 M.C.A. WHICH STATES THAT IF A MANUFACTURER, DISTRIBUTOR, WHOLESALER CANCELS A DEALER, THEY WILL HAVE TO REPURCHASE THE DEALERS INVENTORY AND PARTS.

FOR EXAMPLE:

A. IN EASTERN MONTANA WE HAVE HAD DROUGHT CONDITIONS AND VERY LITTLE SNOWFALL, ← THE LAST 3 YEARS. THEREFORE, SNOWMOBILE SALES HAVE BEEN SLOW. IF A MANUFACTURER OR DISTRIBUTOR FEELS THE DEALER DOES NOT ORDER ENOUGH PRODUCT AND MEET QUOTAS, THEY CAN TERMINATE THE FRANCHISE. WITHOUT THE PROTECTION OF THIS SECTION, WE AS DEALERS WOULD BE STUCK WITH OUR REMAINING NEW INVENTORY AND PARTS. IF A DEALER IS STUCK WITH INVENTORY AFTER BEING CANCELLED BY A MANUFACTURER OR DISTRIBUTOR, IT WOULD BE VERY DIFFICULT TO SELL NEW PRODUCT FROM A POSITION OF NO LONGER BEING A FRANCHISED DEALER FOR THAT PRODUCT. THIS WOULD COMPOUND THE PROBLEM OF GETTING RID OF INVENTORY AND, IN ADDITION, INTEREST AND INSURANCE ON THIS PRODUCT WOULD CONTINUE TIL THE PRODUCTS WERE SOLD. THIS

HVB 150
Exh. #1
140/18

CAN BE VERY COSTLY. IF WE WERE AMENDED INTO THIS SECTION AND THE MANUFACTURER OR DISTRIBUTOR CHOSE TO CANCEL THE FRANCHISE, THEY WOULD HAVE TO REPURCHASE INVENTORY AND PARTS.

B. ANOTHER PROBLEM: A SALES REP FOR A MANUFACTURER OR DISTRIBUTOR CAN ALSO USE MONTANA'S LACK OF FRANCHISE PROTECTION TO THEIR ADVANTAGE TO FORCE A DEALER TO ORDER PRODUCTS BY THREATS OF TERMINATION OR CANCELLATION OF A DEALER FRANCHISE AGREEMENT. THE DEALER KNOWS IF THIS HAPPENS, THE DEALER WILL BE STUCK WITH INVENTORY AND PARTS. I FEEL A DEALER KNOWS BEST WHAT HIS MARKET WILL BEAR AND IF THE DEALER FEELS HE CAN SELL THE PRODUCT, HE WILL ORDER PRODUCT. HE IS IN BUSINESS TO MAKE A PROFIT.

NORTH DAKOTA HAS MOTORCYCLE, ATV, AND SNOWMOBILE REPURCHASE LAWS. IF THE FRANCHISE IS CANCELLED BY THE MANUFACTURER OR DISTRIBUTOR, THE PRODUCTS AND PARTS MUST BE REPURCHASED UNDER TITLE 51, CHAPTER 20, PART 01, NORTH DAKOTA CENTURY CODE.

I FEEL OUR PRODUCTS SHOULD BE AMENDED INTO SECTION 30-11-701 M.C.A., WHICH NOW INCLUDES FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AUTOMOBILES AND TRUCKS. WE ALSO NEED THE PROTECTION OF THIS MONTANA LAW.

15

M & R Cycles

RTE. 1 - BOX 174A - SIDNEY, MT 59270 - (406) 482-2398

DLR #216970.

3-17-87

Yamaha Motor Corp.
6555 Kattella Ave
Cypress Ca. 90630

Dear Sirs

Since you have found it necessary to cancell us as a
Yamaha. Motorcycle, Atv, & snowmobile dealer, I am Enclosing
a list of parts we have in stock

Please Let Me Know at your Earliest convenience
when & where I can send these parts and How many
dollars. I can Expect.

Also please Advise what to do with special tools
& Equipment.

Sincerely,

John A. Zolack

HB 150

Exh #2

1/1/88



YAMAHA MOTOR CORPORATION, U.S.A.

6555 KATELLA AVENUE • CYPRESS, CALIFORNIA 90630
MAIL ADDRESS: P.O. BOX 6555, CYPRESS, CALIFORNIA 90630
PHONE: (714) 761-7300

March 27, 1987

John Zaback
M & R Cycles
Route 1, Box 174A
Sidney, MT 59207

Dear Mr. Zaback:

Your letter of March 17, 1987, has been referred to my desk for review. Under the contract we have the option, but not the obligation to repurchase product and parts. We are choosing not to exercise this option, and do not intend to repurchase your parts or tools.

Don Baldwin, your ex District Manger, may be able to suggest dealers to you which may be interested in purchasing your parts. You should contact Mr. Baldwin on this, directly.

Sincerely,

RUSSELL D. JURA
General Counsel

RDJ:sm

cc: Jim Musser
Don Baldwin

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48

BEFORE THE DEPARTMENT OF JUSTICE
DIVISION OF MOTOR VEHICLES
STATE OF MONTANA

YAMAHA MOTOR CORPORATION,	)	
U.S.A.,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Docket No. 820
	)	
GREAT NORTHWEST RECREATION	)	
CENTER.	)	
	)	
Respondent.	)	

MOTION TO COMPEL DISCOVERY AND
SUPPORTING MEMORANDUM

COMES NOW Great Northwest Recreation Center ("Great Northwest") and moves for entry of an order compelling Yamaha Motor Corporation, U.S.A. ("Yamaha") to answer certain interrogatories and produce certain documents under Rule 37 of the Montana Rules of Civil Procedure. Yamaha should be compelled to fully answer Great Northwest's discovery requests for the following reasons:

STATEMENT OF FACTS

Yamaha filed answers to Great Northwest's First Interrogatories, First Request for Production of Documents and Second Request for Production of Documents on May 31, 1988. In its answers to Great Northwest's discovery requests, Yamaha objected in whole or in part to:

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Exh. #3
1/29/89
18

(1) Great Northwest's Interrogatories No. 6, 13, 14 and 15;

(2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6; and

(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5.

The Hearing Officer has advised that copies of Yamaha's responses to Great Northwest's discovery requests have been filed with him. Accordingly, copies of Yamaha's answers have not been attached to this memorandum.

In some cases Yamaha objected to Great Northwest's discovery requests but then provided the answers or documents in question without waiving the right to assert those objections at the hearing (see, for example, Yamaha's objections to Great Northwest Interrogatory No. 6 and First Request for Production No. 1). In other instances, Yamaha objected to Great Northwest's discovery requests and indicated that copies of the documents in question would be made available for inspection at Yamaha's Cypress, California offices provided that no such inspection would constitute a waiver of Yamaha's objection to the discovery request (see, for example, Yamaha's objections to Great Northwest's First Request for Production No. 1 and 3). Yamaha has objected and refused to produce any documents or answers in response to Interrogatories No. 13 and 15 and Second

Request for Production No. 1, 2, 4 and 5).

ARGUMENT

Great Northwest's discovery requests will result in the production of relevant and material evidence concerning Yamaha's real reasons for terminating Great Northwest's franchise. Great Northwest readily admits that it has suffered through some glum financial times as a result of the depressed Montana economy, the devastating national decrease in the sales of motorcycles and the poor snowmobile market in Montana over the past several winters. Great Northwest has been a faithful Yamaha dealer for over 16 years and Great Northwest will recover from these tough economic times if Yamaha is prevented from driving Great Northwest out of business.

Yamaha's termination notice, answers to discovery and the testimony of Don Baldwin at his June 6, 1988 deposition would have the Department believe that Yamaha's reasons for termination relate to alleged breaches of the franchise agreements between Yamaha and Great Northwest. These alleged breaches are not the real reason Yamaha wants to terminate Great Northwest's franchises. Yamaha stated in its objection to interrogatory No. 6 that it would refuse to provide information about similarly situated dealers because its decision to terminate Great Northwest's franchise agreements was based on Great Northwest's activities from the date of

approval of Great Northwest's Chapter 11 plan only." Great Northwest's Chapter 11 plan was approved by the Montana Bankruptcy Court on June 8, 1987. Yamaha's decision to terminate Great Northwest's franchises was made before June of 1987 and for reasons unrelated to Great Northwest's alleged breaches of the franchise agreements. Yamaha's real reasons for terminating Great Northwest's franchises relate to its desire to drive Great Northwest out of business and establish a new dealer who, overloaded with ITT Yamaha credit, will sell more units but only survive for two or three years. Great Northwest's discovery requests to Yamaha are designed to produce information that will document this fact.

Don Baldwin is Yamaha's Senior District Manager for Montana and Northern Wyoming. At Mr. Baldwin's deposition on June 6, 1988, he was asked a series of questions concerning a January 24, 1987 telephone conversation between Mr. Baldwin and Harvey Markegard, owner of Great Northwest (copies of Mr. Baldwin's deposition will not be available until the hearing). That telephone conversation took place almost 6 months before Great Northwest's bankruptcy plan was approved. The telephone conversation was taped by Mr. Markegard and Mr. Baldwin's statements during that telephone conversation contradict his deposition testimony. (A copy of the complete tape will be introduced at the hearing and is available for

review at the law offices of counsel for Great Northwest.) Mr. Baldwin denied during his deposition that it was Yamaha's intention to drive Great Northwest out of business. Mr. Baldwin further denied that he told Mr. Markegard that the sales department of Yamaha believes "new blood" is needed in the Billings Yamaha dealership. Mr. Baldwin said exactly the opposite on January 24, 1987:

BALDWIN: And Yamaha's direction, Harvey, I'll tell you, absolutely, it is to take you out of the business. Because that is what Rod Stout and the credit department and Jim Musser and everyone in that area, these are the guys that are pushing you out of business. They do not want you because you broke the trust. You know, they just, they don't trust you anymore, for whatever, I don't know what the reason is but when they have a dealer do that, they don't want anything to do with the dealership. So, that's what you're up against, very, very honestly, that is the feeling I get from, you know, the credit department.

HARVEY: Have you actually talked to this guy in Chicago?

BALDWIN: Well, yeah, but he, I have talked to him a couple of times, and really all I do is just say, well Helena is open and I heard that Great Falls might want to sell and he called Great Falls and Chris doesn't want to sell now, he's relocated, he's got the missile base and everything is looking very positive up there. Uh, I said, I asked him, you know, what you had said, and you just said you weren't interested, that is as much as I can say there.

HARVEY: Yeah.

BALDWIN: He said well it's not for sale. Evidentially you were very emphatic about it.

HARVEY: About that time I was, but Jesus, you know, that was before I really found out what Yamaha's attitude was.

BALDWIN: Yeah. Well, then you put yourself in my shoes, okay, as a DM. And a guy who is out here keeping his job strictly with sales and the sales volume, and I have a dealer in Billings, Montana that has ordered 1 snowmobile this year. And I don't know what you would order next year, but I'll bet you wouldn't order more than a dozen snowmobiles if you really got ripping next year. And, I know, that if I had a different dealer in Billings, Montana, a new dealer, the guy is going to step up and order 30-40 sleds.

HARVEY: Uh-hum.

BALDWIN: Okay, so I have to look at that and, of course, I'm the sales department as much as Don Morey is or anyone else and that's all of the mentality in the thinking in sales department is, we need new blood, we need a change in Billings, Montana. And, so its not just in credit, it is also sales that is pushing this.

[Verbatim transcript of January 24, 1987 telephone conversation between Donald Baldwin and Harvey Markegard.]

Mr. Baldwin also denied during his June 6, 1988 deposition that he told Mr. Markegard that Yamaha doesn't care whether its dealers make it financially because Yamaha will simply start a new guy in business who will purchase a bunch of new units but only survive for two or three years. Mr. Baldwin made the following statements to Mr. Markegard on January 24, 1987:

BALDWIN: So, I am trying to be very upfront and, you know, being very honest with you, I am very candid, I think, to a fault many times.

HARVEY: Do they realize what the economy is around here, especially,

BALDWIN: I don't think it makes any difference, Harvey. They realize that if another dealer comes in there that that dealer would stay alive another two or three years, they're going to move a lot of products

through him, and they're going to break him, they're going to put somebody else in. It happens, it just perpetuates itself, it's a beautiful system the Japanese live on. You know, uh, one guy doesn't make it, they'll find someone else who will go in and do it. And until he saturates his market or he burns out, and there's a great deal of burn out out there.

HARVEY: Um-huh.

BALDWIN: You know, where the dealers are just so discouraged, a lot of the burn out comes because they are so financially strapped that they can't do anything. If you started a new store and you came into business with \$50,000 operating capital and you had that left after you got a Yamaha dealership, and you had your doors open, boy you could do a lot of things, couldn't you?

HARVEY: Um-huh.

BALDWIN: Promote, advertise and just go great guns just like this little guy up here in Columbia Falls did. Uh, they just took on outboard motors and _____, so here again, I think that is their salvation because, like I've told them, I think that you're going to find some saturation in your market, you sold so damned many four wheelers last year that that market has got to fall for you a little bit. The only real salvation for their retail business is to diversify a little bit and find a broader customer base with a different product, which is exactly what you've done with your stereo.

HARVEY: Um-huh [Id.].

It is clear that Yamaha has embarked upon a course of action designed to drive Great Northwest out of business. Yamaha has appealed the Bankruptcy Court's approval of Great Northwest's reorganization plan to Judge Battin. Just a few days after the hearing officer in this matter ruled that the snowmobile and power generation franchise agreements were not subject to the Department of Justice's jurisdiction under Title

61, Chapter 4, MCA, Yamaha terminated those franchise agreements (see May 27, 1988 letter to Great Northwest from Yamaha attached as Exhibit 1). Now Yamaha has imposed a greater financial burden on Great Northwest by objecting to legitimate and timely discovery requests from Great Northwest.

Great Northwest's Interrogatories No. 13 and 15, First Request for Production No. 1, 2 and 3, and Second Request for Production No. 1, 2, 4 and 5 are of great relevance to the matters just discussed. These discovery requests seek information regarding the recruitment, retention, longevity, financing and termination of Yamaha dealers. It is clear from Mr. Baldwin's conversation with Harvey Markegard on January 24, 1987 that it is Yamaha's policy to "burn out" dealers through market saturation or over extension of credit and start up a new dealer every two or three years. Don Baldwin admitted during his deposition that every dealer in his district except Great Northwest finances with ITT Yamaha. Mr. Baldwin further indicated that the average floor plan financing for each of those dealers is between \$200,000.00 and \$250,000.00. He also testified that 16 of the 32 dealers in his district had been in business five years or less (Mr. Baldwin testified at the bankruptcy hearing on March 24, 1987 that there were 27 dealers in his district). Dealer history and the financing and termination of those dealerships are relevant issues in this

proceeding.

Yamaha has even objected to producing copies of "all policy statements, memoranda, meeting minutes, letters, or other written documents concerning Yamaha's analysis or discussions of the termination of the franchise agreements with Great Northwest" (see Great Northwest's Second Request for Production No. 1). Great Northwest is not asking Yamaha to produce privileged information, although the question of what documents are protected by the attorney-client privilege is a matter that should be decided by the Hearing Examiner and not Yamaha. It is inconceivable that the internal discussion of the termination of Great Northwest's franchises would be the subject of only two interoffice memoranda (see Exhibit 16 attached to Yamaha's answers to Great Northwest's discovery requests). Great Northwest respectfully requests that all documents be produced and that any claims of privilege be decided by the Hearing Examiner.

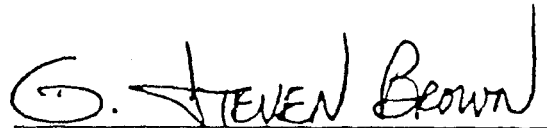
For all of the foregoing reasons Great Northwest respectfully requests that the Hearing Examiner enter an order requiring Yamaha to answer fully and completely:

- (1) Great Northwest's Interrogatories 6, 13, 14 and 15;
- (2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6;

(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5; and

(4) That Yamaha be directed to pay the reasonable attorney fees and costs incurred by Great Northwest in filing this motion to compel discovery.

Respectfully submitted this 7th day of June, 1988.



G. Steven Brown
1313 Eleventh Avenue
Helena, MT 59601
Attorney for Great Northwest
Recreation Center

CERTIFICATE OF SERVICE

I, G. Steven Brown, Attorney for the Great Northwest Recreation Center, hereby certify that I did, on the 7th day of June, 1988, serve a copy by mail of the foregoing and attached Motion to Compel Discovery upon opposing counsel as follows:

Lawrence A. Murphy
Attorney at Law
520 St. John's Building
25 South Ewing
Helena, MT 59601

Hand Delivered
6/7/88
approx. 4:30 P.M.
681



G. Steven Brown
Attorney for Great Northwest
Recreation Center

VISITORS' REGISTER

Business & Economic Dev. COMMITTEEBILL NO. HB's 129 130 150 DATE 1/19/89SPONSOR Stang Stang Johnson

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MARVIN HOLAS	GIENDIVE MT	X	
Ed J. Jorgensen	Bolt	X	
John A. Jelsch	Jidney	X	
HARVEY K. MARKOGARD	BILLWES	X	
MARK A. BRETEL ^{Mark Burt}	MISSOULA	X	
Dennis Neilson	Bozeman	X	
Ken Hovestol	MT. Snowmobile Assn.	HB-150	
Bud Schaan	Reg. Bureau	✓	
Bob Robinson	Highway Div.	24-130 ✓	
Dave Bliss	Orinad	HB 150	
Mike Sherwood	MTLA	HB 150	
Keith Boone	MT. Nurea Assn'		
Tommy Lopez	MTLA & PTA	HB 150	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1 HOUSE BILL NO. 150

2 INTRODUCED BY JOHNSON, TVEIT, GILBERT,

3 ABRAMS, BLAYLOCK, COHEN, WALLIN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPURCHASE OF
6 THE INVENTORY OF CANCELED DEALERSHIPS IN MOTORCYCLES,
7 MOTOR-DRIVEN CYCLES, RECREATIONAL VEHICLES, QUADRICYCLES,
8 SNOWMOBILES, OFF-HIGHWAY VEHICLES, AND BOATS AND ENGINES;
9 AND AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 30-11-701, MCA, is amended to read:

14 "30-11-701. Definitions. As used in this part, the
15 following definitions apply:

16 (1) "Current net price" means:

17 (a) with respect to a dealership contract, the price
18 listed in the wholesaler's, manufacturer's, or distributor's
19 price list or catalog in effect at the time a dealership
20 contract is discontinued or, if none is then in effect, the
21 last available price so listed; and

22 (b) with respect to a distribution contract, the price
23 listed in the manufacturer's or distributor's price list or
24 catalog in effect at the time a distribution contract is
25 discontinued or, if none is then in effect, the last

1 available price so listed.

2 (2) "Dealership contract" means a written contract
3 between a retailer and a wholesaler, manufacturer, or
4 distributor in which the retailer becomes a dealer in goods
5 sold by the wholesaler, manufacturer, or distributor,
6 evidenced by a franchise agreement, sales agreement,
7 security agreement, or other similar agreement or
8 arrangement.

9 (3) "Distribution contract" means a written contract
10 between a wholesaler and a manufacturer or distributor in
11 which the wholesaler becomes a dealer in goods sold by the
12 manufacturer or distributor, evidenced by a franchise
13 agreement, sales agreement, security agreement, or other
14 similar agreement or arrangement.

15 (4) "Inventory" means:

16 (a) farm implements, machinery, attachments, and
17 repair parts;

18 (b) industrial and construction equipment and repair
19 parts; and

20 (c) automobiles, trucks, and repair parts sold by an
21 automobile or truck dealer as defined in 61-1-314;

22 (d) motorcycles, motor-driven cycles, recreational
23 vehicles, and quadricycles, as those terms are defined in
24 Title 61, chapter 1, part 1, and repair parts;

25 (e) snowmobiles, as defined in 23-2-601, and repair

1 parts;

2 (f) off-highway vehicles, as defined in 23-2-801, and
3 repair parts; and

4 (g) vessels, as defined in 23-2-502, detachable motors
5 or engines used to propel vessels, and repair parts.

6 (5) "Net cost" means:

7 (a) with respect to a dealership contract, the price
8 actually paid for an inventory item by the retailer to the
9 wholesaler, manufacturer, or distributor, plus applicable
10 freight costs paid by or charged to the retailer; and

11 (b) with respect to a distribution contract, the price
12 actually paid for an inventory item by the wholesaler to a
13 manufacturer or distributor, plus applicable freight costs
14 paid by or charged to the wholesaler.

15 (6) "Retailer" or "retail dealer" means any
16 individual, partnership, association, or corporation engaged
17 in the business of selling inventory, as defined in this
18 section, to the general public.

19 (7) "Wholesaler" means any individual, partnership,
20 association, or corporation engaged in the business of
21 selling inventory, as defined in this section, to
22 retailers."

23 NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT]
24 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on January 27,
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Gene Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Lynch

Members Excused: Senator Weeding

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 129

Presentation and Opening Statement by Sponsor:

Representative Stang, House District 52, explained HB 129 was proposed by the Department of Justice, and they had asked him to sponsor the bill. The Department of Justice would be provided with the authority to impose a cease and desist order to people engaged in the business of new motor vehicle manufacturing, distributing, or importing without a license. This does not exempt person engaged in the business of motor vehicle dealers.

Representative Stang said that within the last year the Department had investigated fifty seven unlicensed dealers, who were informed of the license requirement. Twenty four came into compliance, twenty two discontinued activities, and eleven cases were still pending. The department referred the pending violations to the county attorney's office. The county attorney didn't want to take action on those violations, so the department wanted the authority to issue cease and desist orders to those who do not comply with dealer licensing laws.

carry HB 130 on the Senate floor.

HEARING ON HOUSE BILL 150

Presentation and Opening Statement by Sponsor:

Representative Johnson, House District 23, stated HB 150 amended MCA 30-11-701, requiring the purchase of the inventory of cancelled dealerships selling motorcycles, motor driven cycles, recreational vehicles, snowmobiles, off highway vehicles, and other vessels. He said, presently, under that same code, farm implements and parts, industrial and construction equipment and parts, automobiles, trucks and parts are subject to repurchases of the inventory by the manufacturer or wholesaler if the franchise is withdrawn or cancelled. He said H B 150 would add to the statute, other types of vehicles and vessels.

List of Testifying Proponents and What Group They Represent:

Marvin Holas - Glendive Sales Corporation, Glendive,
Montana
John Zaback, M & R Cycles - Sidney, Montana (written)
Harvey Markegard - Billings, Montana
Bonnie Tippy - Manufactured Housing and Recreational
Vehicle Dealers Association in Montana
Dennis Niebauer - Bozeman, Montana
Warren Hoffman - Helena Motorcycle Supply, Helena,
Montana
Larry Anderson - Bliss Cycle Sales, Conrad, Montana
Senator Del Gage - Senate District 5, Cutbank, Montana
Senator Larry Tveit, Senate District 11, Fairview,
Montana

List of Testifying Opponents and What Group They Represent:

Gene Philips - Recreational Vehicle Industry of America
Tom Dowling - Motorcycle Industry Council Incorporated
Ron Stone - Boat & Motor Dealers, Washington, D.C.

Testimony: Marvin Holas stated, their problems as motorcycle, snowmobile, and ATV dealers, were similar to the franchise problems auto and truck dealers had when their franchise agreements were terminated or cancelled by their manufacturer or distributor. Franchise agreements were drafted for the benefit of the manufacturers and wholesalers, and dealers did not have equal bargaining powers. Therefore, dealers needed the franchise protection offered in section 30-11-701 M.C.A. (See Exhibit #1)

John Zaback had written testimony that was presented and read by Marvin Holas. (See Exhibit #2, & #3)

Harvey Markegard said he was a motorcycle dealer and had been in business for 17 years. He stated, thousands upon thousands of dollars had been taken out of Montana that would have been returned to our economy if dealers had been under the protection of the Montana franchise law. As Mr. Liepheimer testified at the last committee, he is now the Yamaha dealer in Bozeman. His good friend was the previous Yamaha dealer. His friend's dealership was terminated, and was left with about \$100,000 in Yamaha parts. With franchise protection, Yamaha would have had to take the parts back before terminating the franchise.

Mr. Markegard became a Yamaha dealer on January 1, 1972, and was terminated last summer. Unlike the dealer from Sidney, he decided to fight the termination. He said he spent about \$12,000 in attorney fees, and fought Yamaha before the Department of Justice, Division of Motor Vehicles. All through the trial he said he was informed, even if he won, the case would be taken to higher courts. Yamaha would simply out spend him, so he settled out of court. He said he was able to return \$15,000 in parts, and was left with about \$85,000 in Yamaha parts for which he had no use. He stated, the testimony he had presented was from the trial, and on page 6, the testimony came from a Yamaha official, who had been with Yamaha 16 years. (See Exhibit #4) They figure with the economy, their programs, and the laws of Montana, the life expectancy of a Yamaha dealer was about three and one half years. When the dealer goes down, they won't buy any parts back, and just find a new dealer. That is the way they have designed their program, and it takes a lot of money out of Montana.

Bonnie Tippy said the recreational vehicle dealers in Montana strongly support HB 150. She said they felt the things that had been talked about, were happening all over the state and should be addressed. She said she thought HB 150 would be of great value, especially to the small businesses of Montana.

Dennis Niebauer said he was an auto dealer from Bozeman. He said he had also carried a large inventory of recreational vehicles, and had been a dealer for 18 years. He said he supported HB 150 for reasons already testified to. There was no protection for dealers that spend a lot of money to get the franchise, and to

develop their market. When a dealer had a bad year, the factory representative or manufacturer could terminate the franchise with no protection for the dealers.

Warren Hoffman said, as recreation vehicle dealers, their franchise problems were very similar to the problems automobile and truck dealers had before they had franchise protection. He said he felt their products should be amended into section 30-11-701, M.C.A. He said they also need the protection of the law. (See Exhibit #7)

Larry Anderson said that although they were a healthy dealership, they saw a problem with the large amount of capital being taken out of Montana. He said they could not order one part at a time, they had to buy a package of twelve. He said that happened nearly every time a part was ordered, and when a dealership had numerous franchises, the amount of money invested in parts became very substantial over a period of years. As had been stated, when a franchise was pulled, there was no effort to take the inventory back.

Mr. Anderson said, the manufacturers were at no risk, because dealers had to order in advance so the factory could build the equipment after they had the orders. The dealers and taxpayers of Montana did, in fact, have a great deal of risk.

Senator Del Gage, Senate District 5, said he had talked with dealers from his area, and they were in favor of HB 150. He thought, however, with the law in place, franchises would be a little harder to come by in Montana. He said that may not be all bad, because it may cause manufacturers to protect their existing franchises. He said he urged consideration on HB 150.

Senator Tveit, Senate District 11, supported the bill, and agreed with the testimony. He said he thought it wrong to have franchises pulled, and no consideration given for parts and inventory.

Gene Phillips said the R.V. Association felt most recreational vehicle dealers in Montana were small businesses, and were financed through the Small Business Association. If they had to carry the entire inventory for Montana, as a contingent liability on their books for a period of three years, it would have a very detrimental affect on their ability to find operational financing.

24

The statute, as proposed, required the buy back of all inventory that had been held for up to thirty-six months. He said they felt that was a longer period of time than was necessary in the case of recreational vehicles, such as motor homes. He said some states required buy back for only the current year, and only upon termination by the manufacturer, not the dealer. He said, the problem with buy back of new inventory, is that the manufacturer doesn't know what has been done with it. He stated, the vehicles may have been used, and returned to inventory, or the dealer could terminate the franchise, and make the manufacturer buy it back as new, when it was actually used. He felt HB 150 should be amended to allow buy back for current year unused inventory, and in cases of termination by the manufacturer, give them some degree of protection from the dealers.

Tom Dowling pointed out the fact that a retailer could cancel the franchise agreement. Under existing Montana law, 30-11-702 if either the retailer, or the wholesaler or manufacturer cancelled the contract, the buy back occurred. The statute pertained to larger motor vehicles, cars, trucks, and those types of things. He said they weren't dealing with that type of inventory, they were dealing with small items. He said, you are asking for franchise guarantees. You are eliminating the ability of the wholesaler or the manufacturer to tell a franchise dealer they weren't doing the job. They were dissatisfied and they were going to get somebody else to do the job. Under those circumstances, you are saying the manufacturer must buy all their remaining inventory that was purchased within the last three years. He said they felt it was a terrible burden on commerce and trade.

He felt Mr. Phillips suggestion of current year buy back upon the manufacturer's termination of the franchise was a good suggestion. (See Exhibit #5 & #6)

Chairman Thayer said Mr. Smith had commented, that to their knowledge, they had never had a complaint regarding boat or motor dealers in Montana. He said, Mr. Smith had expressed two concerns (1) A dealer could trigger the buy back. (2) What had caused the cancellation. He said, Mr Stone had pointed out the possibility of a dealer being cancelled for non-payment of bills. He had said this would be unfair.

Questions From Committee Members: Senator Lynch stated, as he understood it, Mr. Dowling was not objecting to new language of HB 150. He said, the farm implement and

auto manufacturers didn't seem to have a problem with the three year buy back. He said he felt most dealerships didn't have three year old inventory. He asked Mr. Dowling to explain his objections to the bill.

Mr. Dowling said the parts were the problem. 30-11-703, sub-section 7, says they must buy back inventory items that had been in stock for thirty-six months or more.

Senator Lynch asked why so many businesses were included in the bill? Why not just snowmobiles? Representative Johnson said, in the House hearing, all of the dealers had been represented, and their testimony revealed the problem to be widespread.

Chairman Thayer inquired of Representative Johnson if boat and motor dealers were also represented? Representative Johnson said there had been a representative testify in the House.

Chairman Thayer stated he had received a telephone call from Mr. Ron Stone of the Marine Manufacturers Association in Washington D.C. He said, Mr. Smith had stated he was representing boat and motor dealers and they were vigorously opposed to the bill.

Senator Noble said he felt the testimony was telling the committee was to tell the manufacturers and distributors of Yamaha to be more selective in choosing dealers. Did that mean it is too easy to get a franchise without enough business back ground? Mr. Neibauer said Montana had been having a lot of waves. He felt that on a poor year, the oldest, most established dealers probably weren't going to sell a lot, especially RVs. He said if the manufacturers were not satisfied, they could move the franchise to a new dealer. Thus, leaving the old dealer with all of his inventory. He said that once you lost the franchise, you could no longer do warranty work because you lacked authorization. He said that left the dealers no recourse in disposing of his inventory.

Senator Boylan said RV's don't change models as often as cars. He felt they were similar from year to year. He asked if that wasn't quite different from automobiles. Mr. Neibauer agreed, the structure didn't change as often.

Senator Williams asked if the language on page 1, line 6, made it necessary to have a good reason to cancel a dealership. Senator Lynch, though Senator William's

suggestion, would create what he called a "lawyer's dream".

Senator Noble asked if the manufacturer canceled the dealership, they would have to buy the inventory. If the dealer decides not to handle the product, could he send the inventory back? He also asked if the dealers losing their franchises in Montana, were they going bankrupt or were they just going out of business?

Mr. Markegard said a lot of the Montana dealers had borrowed on everything they owned, to purchase their franchise. So when they lost it, he assumed they were broke. Some really weren't business people and they shouldn't have been sold the franchise in the beginning.

Senator Williams asked Mr. Markegard if after having been a dealer for seventeen years, did he receive any previous notice, or was he just notified of cancellation? He said he was just terminated, so he filed suit with the state, to register his objection.

Senator Williams wondered if any American manufacturers' franchises were terminated in the same manner? Mr. Markegard said he hadn't heard of any, but wasn't sure he was qualified to answer.

Senator Lynch asked what the reason was for an immediate effective date upon passage and approval? He wondered if Representative Johnson was fearful that Yamaha, and others would remove all their dealerships before the normal October date? Representative Johnson replied that it wasn't a threat of pulled franchises, but dumping of materials. He said he would like to comment on the question of repayment. He said 30-11-702 M.C.A. stated that if the retailer cancelled, the manufacturer could credit his account. He said the retailer has an outstanding liability to the wholesaler or distributor. The wholesaler or distributor was paid first, so the amount the retailer paid for the inventory and the amount he received from the buy back were not equal.

Chairman Thayer questioned Bonnie Tippy in regards to the retailer abusing the conditions of the proposed legislation by rejecting franchises to cover poor management of his business. Ms. Tippy said the potential for abuse certainly was there, but she hadn't heard of any in the several years of buy back provisions already in the statute. She said she could see no reason to suspect retailer abuse from RV dealers either. From the statutes, the manufacturer only had to accept new, unused, and undamaged equipment.

Chairman Thayer asked Mr. Holas to respond to the same question. Mr. Holas, also, said he was not aware of any previous abuses by the retailers, so seemingly the law was appropriate. He interjected the thought that he was also a Honda dealer, and in their franchise agreement they say they will repurchase all their products and parts. He said that was their philosophy, and in almost every other state in the Union, they have to do it anyway.

Warren Hoffman replied to the question of the ease of obtaining an RV dealership. He said the amount of money involved, because of the requirements by the manufacturer, made the purchase of franchises quite difficult to finance.

Chairman Thayer, upon recalling the phone call, said he had been informed that if HB 150 passed, people would have to go out of state to purchase boats. Mr. Niebauer stated he didn't feel that was true. He said the major manufacturers of marine products are New Brunswick Corp, Mercury, OMC Corp., Johnson, Evenrude. Most of the American manufacturers have gone outside now, and Japanese companies have moved in. He said he was sure, as marine dealers in the state, they would support HB 150.

Senator Noble wondered if passage of HB 150 would help improve the business climate in Montana. He thought marine and motor home dealers could have presented some testimony.

Senator Williams asked Representative Johnson to clarify reasons for cancellation of franchises. Representative Johnson said he didn't want to become involved in the question of "do cause".

Mary McCue explained that adding language addressing "do cause" would affect existing legislation, and include a whole additional requirement. The people already included would have an interest in having the substance of the law changed and would have to be notified as such. She didn't think changes of that type could be done because it was beyond the purpose and title of the bill.

Closing by Sponsor: Representative Johnson stated the problem wasn't localized, it was state wide. He stated that before the session started, he had heard talk about economic development of competition for small business. He said, HB 150 will help small businesses

retain their dealerships, or at least give them a tool to recapture some of their investment. He urged a do pass on HB 150.

DISPOSITION OF HOUSE BILL 150

Discussion: Senator Thayer said we will hold this bill for further study.

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF SENATE BILL 151

Discussion: Mary McCue reviewed the bill and amendments for the committee.

Senator Lynch stated, booth rental caused him some concern. He said he didn't think the landlord should be liable for booth renters. He stated, they are independent businesses, and should be liable for their own actions.

Senator Meyer said booth renters should be responsible for their own telephone, insurance, record appointments, and all the other details of an independent business.

Senator Williams explained renting business space was different than renting living space. If five people, operating individual businesses in one building, would each have to be licensed by the city, state, as well as being licensed to practice their business? He wondered if passage of HB 151 would mandate all businesses involved had all the same licensing requirements as the salon owner? Mr. Tucker said all of the operators do business under the salon license, but each booth would require a booth license in order to practice individually. The obligation of the license holder of the salon was the same as any leaser. He said the individual inspections would be on each booth. If one or more couldn't pass, then the landlord would be responsible for removing the problem. He said the entire salon wouldn't be closed by the state inspector. He also asked permission to hand out copies of a letter he had received concerning SB 151. See exhibit #9.

Chairman Thayer wondered if the salon owner conducted a business within, or just booth rental. Mr. Tucker said either way would qualify.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/27/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>			✓
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

MARVIN HOLAS
GLENDDIVE SALES CORP D.B.A. HOLAS MID AMERICA SPORT CENTER
GLENDDIVE, MONTANA

PROPONENT

OUR PROBLEMS AS A MOTORCYCLE, SNOWMOBILE AND ATV DEALER ARE VERY SIMILAR TO THE FRANCHISE PROBLEMS THAT AUTOMOBILE AND TRUCK DEALERS HAD WHEN THEIR FRANCHISE AGREEMENTS WERE TERMINATED OR CANCELLED BY A MANUFACTURER OR DISTRIBUTOR. FRANCHISE AGREEMENTS ARE DRAFTED FOR A MANUFACTURER OR DISTRIBUTOR BY THEIR LEGAL COUNSEL AND ARE ONE SIDED FOR THE MANUFACTURER OR DISTRIBUTOR. THE DEALER DOES NOT HAVE EQUAL BARGAINING POWER AND THEREFORE, NEEDS THE FRANCHISE PROTECTION OFFERED IN SECTION 30-11-701 M.C.A. WHICH STATES THAT IF A MANUFACTURER, DISTRIBUTOR, WHOLESALER CANCELS A DEALER, THEY WILL HAVE TO REPURCHASE THE DEALERS INVENTORY AND PARTS.

FOR EXAMPLE:

A. IN EASTERN MONTANA WE HAVE HAD DROUGHT CONDITIONS AND VERY LITTLE SNOWFALL, THE LAST 3 YEARS. THEREFORE, SNOWMOBILE SALES HAVE BEEN SLOW. IF A MANUFACTURER OR DISTRIBUTOR FEELS THE DEALER DOES NOT ORDER ENOUGH PRODUCT AND MEET QUOTAS, THEY CAN TERMINATE THE FRANCHISE. WITHOUT THE PROTECTION OF THIS SECTION, WE AS DEALERS WOULD BE STUCK WITH OUR REMAINING NEW INVENTORY AND PARTS. IF A DEALER IS STUCK WITH INVENTORY AFTER BEING CANCELLED BY A MANUFACTURER OR DISTRIBUTOR, IT WOULD BE VERY DIFFICULT TO SELL NEW PRODUCT FROM A POSITION OF NO LONGER BEING A FRANCHISED DEALER FOR THAT PRODUCT. THIS WOULD COMPOUND THE PROBLEM OF GETTING RID OF INVENTORY AND, IN ADDITION, INTEREST AND INSURANCE ON THIS PRODUCT WOULD CONTINUE TIL THE PRODUCTS WERE SOLD. THIS

(Ex 1-pg. 1)
1/27/8

CAN BE VERY COSTLY. IF WE WERE AMENDED INTO THIS SECTION AND THE MANUFACTURER OR DISTRIBUTOR CHOSE TO CANCEL THE FRANCHISE, THEY WOULD HAVE TO REPURCHASE INVENTORY AND PARTS.

B. ANOTHER PROBLEM: A SALES REP FOR A MANUFACTURER OR DISTRIBUTOR CAN ALSO USE MONTANA'S LACK OF FRANCHISE PROTECTION TO THEIR ADVANTAGE TO FORCE A DEALER TO ORDER PRODUCTS BY THREATS OF TERMINATION OR CANCELLATION OF A DEALER FRANCHISE AGREEMENT. THE DEALER KNOWS IF THIS HAPPENS, THE DEALER WILL BE STUCK WITH INVENTORY AND PARTS. I FEEL A DEALER KNOWS BEST WHAT HIS MARKET WILL BEAR AND IF THE DEALER FEELS HE CAN SELL THE PRODUCT, HE WILL ORDER PRODUCT. HE IS IN BUSINESS TO MAKE A PROFIT.

NORTH DAKOTA HAS MOTORCYCLE, ATV, AND SNOWMOBILE REPURCHASE LAWS. IF THE FRANCHISE IS CANCELLED BY THE MANUFACTURER OR DISTRIBUTOR, THE PRODUCTS AND PARTS MUST BE REPURCHASED UNDER TITLE 51, CHAPTER 20, PART 01, NORTH DAKOTA CENTURY CODE.

I FEEL OUR PRODUCTS SHOULD BE AMENDED INTO SECTION 30-11-701 M.C.A., WHICH NOW INCLUDES FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AUTOMOBILES AND TRUCKS. WE ALSO NEED THE PROTECTION OF THIS MONTANA LAW.

EXHIBIT NO. 2DATE 1/27/89BILL NO. HB150**M & R Cycles**

RTE. 1 - BOX 174A - SIDNEY, MT 59270 - (406) 482-2398

DLI. #216970.

3-17-87

Yamaha Motor Corp.
6555 Kattella Ave
Cypress Ca. 90630

Dear Sirs

Since you have found it necessary to cancel us as a
Yamaha. Motorcycle, ATV, & snowmobile dealer, I am enclosing
a list of parts we have in stock

Please let me know at your earliest convenience
when & where I can send these parts. and How many
dollars. I can Export.

Also please advise what to do with special tools
& Equipment.

Sincerely,

John A. Golacki



YAMAHA MOTOR CORPORATION, U.S.A. EXHIBIT NO. 3
DATE 1/27/89
BILL NO. SB150

6555 KATELLA AVENUE • CYPRESS, CALIFORNIA 90630
MAIL ADDRESS: P.O. BOX 6555, CYPRESS, CALIFORNIA 90630
PHONE: (714) 761-7300

March 27, 1987

John Zaback
M & R Cycles
Route 1, Box 174A
Sidney, MT 59207

Dear Mr. Zaback:

Your letter of March 17, 1987, has been referred to my desk for review. Under the contract we have the option, but not the obligation to repurchase product and parts. We are choosing not to exercise this option, and do not intend to repurchase your parts or tools.

Don Baldwin, your ex District Manger, may be able to suggest dealers to you which may be interested in purchasing your parts. You should contact Mr. Baldwin on this, directly.

Sincerely,

RUSSELL D. JURA
General Counsel

RDJ:sm

cc: Jim Musser
Don Baldwin

44

BEFORE THE DEPARTMENT OF JUSTICE
DIVISION OF MOTOR VEHICLES
STATE OF MONTANA

YAMAHA MOTOR CORPORATION,	)	
U.S.A.,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Docket No. 820
	)	
GREAT NORTHWEST RECREATION	)	
CENTER.	)	
	)	
Respondent.	)	

MOTION TO COMPEL DISCOVERY AND
SUPPORTING MEMORANDUM

COMES NOW Great Northwest Recreation Center ("Great Northwest") and moves for entry of an order compelling Yamaha Motor Corporation, U.S.A. ("Yamaha") to answer certain interrogatories and produce certain documents under Rule 37 of the Montana Rules of Civil Procedure. Yamaha should be compelled to fully answer Great Northwest's discovery requests for the following reasons:

STATEMENT OF FACTS

Yamaha filed answers to Great Northwest's First Interrogatories, First Request for Production of Documents and Second Request for Production of Documents on May 31, 1988. In its answers to Great Northwest's discovery requests, Yamaha objected in whole or in part to:

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(1) Great Northwest's Interrogatories No. 6, 13, 14 and 15;

(2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6; and

(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5.

The Hearing Officer has advised that copies of Yamaha's responses to Great Northwest's discovery requests have been filed with him. Accordingly, copies of Yamaha's answers have not been attached to this memorandum.

In some cases Yamaha objected to Great Northwest's discovery requests but then provided the answers or documents in question without waiving the right to assert those objections at the hearing (see, for example, Yamaha's objections to Great Northwest Interrogatory No. 6 and First Request for Production No. 1). In other instances, Yamaha objected to Great Northwest's discovery requests and indicated that copies of the documents in question would be made available for inspection at Yamaha's Cypress, California offices provided that no such inspection would constitute a waiver of Yamaha's objection to the discovery request (see, for example, Yamaha's objections to Great Northwest's First Request for Production No. 1 and 3). Yamaha has objected and refused to produce any documents or answers in response to Interrogatories No. 13 and 15 and Second

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Request for Production No. 1, 2, 4 and 5).

ARGUMENT

Great Northwest's discovery requests will result in the production of relevant and material evidence concerning Yamaha's real reasons for terminating Great Northwest's franchise. Great Northwest readily admits that it has suffered through some glum financial times as a result of the depressed Montana economy, the devastating national decrease in the sales of motorcycles and the poor snowmobile market in Montana over the past several winters. Great Northwest has been a faithful Yamaha dealer for over 16 years and Great Northwest will recover from these tough economic times if Yamaha is prevented from driving Great Northwest out of business.

Yamaha's termination notice, answers to discovery and the testimony of Don Baldwin at his June 6, 1988 deposition would have the Department believe that Yamaha's reasons for termination relate to alleged breaches of the franchise agreements between Yamaha and Great Northwest. These alleged breaches are not the real reason Yamaha wants to terminate Great Northwest's franchises. Yamaha stated in its objection to interrogatory No. 6 that it would refuse to provide information about similarly situated dealers because its decision to terminate Great Northwest's franchise agreements was based on Great Northwest's "activities from the date of

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approval of Great Northwest's Chapter 11 plan only." Great Northwest's Chapter 11 plan was approved by the Montana Bankruptcy Court on June 8, 1987. Yamaha's decision to terminate Great Northwest's franchises was made before June of 1987 and for reasons unrelated to Great Northwest's alleged breaches of the franchise agreements. Yamaha's real reasons for terminating Great Northwest's franchises relate to its desire to drive Great Northwest out of business and establish a new dealer who, overloaded with ITT Yamaha credit, will sell more units but only survive for two or three years. Great Northwest's discovery requests to Yamaha are designed to produce information that will document this fact.

Don Baldwin is Yamaha's Senior District Manager for Montana and Northern Wyoming. At Mr. Baldwin's deposition on June 6, 1988, he was asked a series of questions concerning a January 24, 1987 telephone conversation between Mr. Baldwin and Harvey Markegard, owner of Great Northwest (copies of Mr. Baldwin's deposition will not be available until the hearing). That telephone conversation took place almost 6 months before Great Northwest's bankruptcy plan was approved. The telephone conversation was taped by Mr. Markegard and Mr. Baldwin's statements during that telephone conversation contradict his deposition testimony. (A copy of the complete tape will be introduced at the hearing and is available for

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review at the law offices of counsel for Great Northwest.) Mr. Baldwin denied during his deposition that it was Yamaha's intention to drive Great Northwest out of business. Mr. Baldwin further denied that he told Mr. Markegard that the sales department of Yamaha believes "new blood" is needed in the Billings Yamaha dealership. Mr. Baldwin said exactly the opposite on January 24, 1987:

BALDWIN: And Yamaha's direction, Harvey, I'll tell you, absolutely, it is to take you out of the business. Because that is what Rod Stout and the credit department and Jim Musser and everyone in that area, these are the guys that are pushing you out of business. They do not want you because you broke the trust. You know, they just, they don't trust you anymore, for whatever, I don't know what the reason is but when they have a dealer do that, they don't want anything to do with the dealership. So, that's what you're up against, very, very honestly, that is the feeling I get from, you know, the credit department.

HARVEY: Have you actually talked to this guy in Chicago?

BALDWIN: Well, yeah, but he, I have talked to him a couple of times, and really all I do is just say, well Helena is open and I heard that Great Falls might want to sell and he called Great Falls and Chris doesn't want to sell now, he's relocated, he's got the missile base and everything is looking very positive up there. Uh, I said, I asked him, you know, what you had said, and you just said you weren't interested, that is as much as I can say there.

HARVEY: Yeah.

BALDWIN: He said well it's not for sale. Evidently you were very emphatic about it.

HARVEY: About that time I was, but Jesus, you know, that was before I really found out what Yamaha's attitude was.

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BALDWIN: Yeah. Well, then you put yourself in my shoes, okay, as a DM. And a guy who is out here keeping his job strictly with sales and the sales volume, and I have a dealer in Billings, Montana that has ordered 1 snowmobile this year. And I don't know what you would order next year, but I'll bet you wouldn't order more than a dozen snowmobiles if you really got ripping next year. And, I know, that if I had a different dealer in Billings, Montana, a new dealer, the guy is going to step up and order 30-40 sleds.

HARVEY: Uh-hum.

BALDWIN: Okay, so I have to look at that and, of course, I'm the sales department as much as Don Morey is or anyone else and that's all of the mentality in the thinking in sales department is, we need new blood, we need a change in Billings, Montana. And, so its not just in credit, it is also sales that is pushing this.

[Verbatim transcript of January 24, 1987 telephone conversation between Donald Baldwin and Harvey Markegard.]

Mr. Baldwin also denied during his June 6, 1988 deposition that he told Mr. Markegard that Yamaha doesn't care whether its dealers make it financially because Yamaha will simply start a new guy in business who will purchase a bunch of new units but only survive for two or three years. Mr. Baldwin made the following statements to Mr. Markegard on January 24, 1987:

BALDWIN: So, I am trying to be very upfront and, you know, being very honest with you, I am very candid, I think, to a fault many times.

HARVEY: Do they realize what the economy is around here, especially,

BALDWIN: I don't think it makes any difference, Harvey. They realize that if another dealer comes in there that that dealer would stay alive another two or three years, they're going to move a lot of products

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through him, and they're going to break him, they're going to put somebody else in. It happens, it just perpetuates itself, it's a beautiful system the Japanese live on. You know, uh, one guy doesn't make it, they'll find someone else who will go in and do it. And until he saturates his market or he burns out, and there's a great deal of burn out out there.

HARVEY: Um-huh.

BALDWIN: You know, where the dealers are just so discouraged, a lot of the burn out comes because they are so financially strapped that they can't do anything. If you started a new store and you came into business with \$50,000 operating capital and you had that left after you got a Yamaha dealership, and you had your doors open, boy you could do a lot of things, couldn't you?

HARVEY: Um-huh.

BALDWIN: Promote, advertise and just go great guns just like this little guy up here in Columbia Falls did. Uh, they just took on outboard motors and _____, so here again, I think that is their salvation because, like I've told them, I think that you're going to find some saturation in your market, you sold so damned many four wheelers last year that that market has got to fall for you a little bit. The only real salvation for their retail business is to diversify a little bit and find a broader customer base with a different product, which is exactly what you've done with your stereo.

HARVEY: Um-huh [Id.].

It is clear that Yamaha has embarked upon a course of action designed to drive Great Northwest out of business. Yamaha has appealed the Bankruptcy Court's approval of Great Northwest's reorganization plan to Judge Battin. Just a few days after the hearing officer in this matter ruled that the snowmobile and power generation franchise agreements were not subject to the Department of Justice's jurisdiction under Title

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61, Chapter 4, MCA, Yamaha terminated those franchise agreements (see May 27, 1988 letter to Great Northwest from Yamaha attached as Exhibit 1). Now Yamaha has imposed a greater financial burden on Great Northwest by objecting to legitimate and timely discovery requests from Great Northwest.

Great Northwest's Interrogatories No. 13 and 15, First Request for Production No. 1, 2 and 3, and Second Request for Production No. 1, 2, 4 and 5 are of great relevance to the matters just discussed. These discovery requests seek information regarding the recruitment, retention, longevity, financing and termination of Yamaha dealers. It is clear from Mr. Baldwin's conversation with Harvey Markegard on January 24, 1987 that it is Yamaha's policy to "burn out" dealers through market saturation or over extension of credit and start up a new dealer every two or three years. Don Baldwin admitted during his deposition that every dealer in his district except Great Northwest finances with ITT Yamaha. Mr. Baldwin further indicated that the average floor plan financing for each of those dealers is between \$200,000.00 and \$250,000.00. He also testified that 16 of the 32 dealers in his district had been in business five years or less (Mr. Baldwin testified at the bankruptcy hearing on March 24, 1987 that there were 27 dealers in his district). Dealer history and the financing and termination of those dealerships are relevant issues in this

proceeding.

Yamaha has even objected to producing copies of "all policy statements, memoranda, meeting minutes, letters, or other written documents concerning Yamaha's analysis or discussions of the termination of the franchise agreements with Great Northwest" (see Great Northwest's Second Request for Production No. 1). Great Northwest is not asking Yamaha to produce privileged information, although the question of what documents are protected by the attorney-client privilege is a matter that should be decided by the Hearing Examiner and not Yamaha. It is inconceivable that the internal discussion of the termination of Great Northwest's franchises would be the subject of only two interoffice memoranda (see Exhibit 16 attached to Yamaha's answers to Great Northwest's discovery requests). Great Northwest respectfully requests that all documents be produced and that any claims of privilege be decided by the Hearing Examiner.

For all of the foregoing reasons Great Northwest respectfully requests that the Hearing Examiner enter an order requiring Yamaha to answer fully and completely:

- (1) Great Northwest's Interrogatories 6, 13, 14 and 15;
- (2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6;

Ex. 4

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(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5; and

(4) That Yamaha be directed to pay the reasonable attorney fees and costs incurred by Great Northwest in filing this motion to compel discovery.

Respectfully submitted this 7th day of June, 1988.

G. STEVEN BROWN

G. Steven Brown
1313 Eleventh Avenue
Helena, MT 59601
Attorney for Great Northwest
Recreation Center

CERTIFICATE OF SERVICE

I, G. Steven Brown, Attorney for the Great Northwest Recreation Center, hereby certify that I did, on the 7th day of June, 1988, serve a copy by mail of the foregoing and attached Motion to Compel Discovery upon opposing counsel as follows:

Lawrence A. Murphy
Attorney at Law
520 St. John's Building
25 South Ewing
Helena, MT 59601

Hand Delivered
6/7/88
approx. 4:30 P.M.
68

G. STEVEN BROWN

G. Steven Brown
Attorney for Great Northwest
Recreation Center

EXHIBIT NO. 5

(This sheet to be used by those testifying on a bill.) 1/27/89

BILL NO. HB 150

NAME: Tom Dowling DATE: 1/27/89

ADDRESS: 3030 N. Montana, Helena

PHONE: 442-9000

REPRESENTING WHOM? Motorcycle Industry Council Inc

APPEARING ON WHICH PROPOSAL: N.O. 150

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? X

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



**MOTORCYCLE
INDUSTRY
COUNCIL, INC.**

1235 Jefferson Davis Hwy., Suite 600, Arlington, VA 22202 • (703) 521-0444 • FAX (703) 521-1023

TALKING POINTS ON HB 150

The Motorcycle Industry Council (MIC) is a non-profit trade association representing nearly 100 manufacturers and distributors of motorcycles, motorcycle parts and accessories, as well as members of allied trades, the majority of whom do business in the State of Montana.

The MIC opposes passage of HB 150.

The bill does not promote, and in fact will be detrimental to, the public interest, as HB 150, if enacted, will inevitably result in higher prices which consumers must pay for motorcycles and other recreational vehicles, parts and accessories.

HB 150 will substantially raise the cost of doing business by a motor vehicle manufacturer or distributor, who becomes, under the bill, a financial guarantor for the motor vehicle dealer. For example:

This bill would require the manufacturer to repurchase vehicles at 100% of the purchase price and repair parts at 85% of the purchase price. Moreover, the manufacturer would have this obligation regardless of the reason for termination; whether termination was for good cause, or whether it was the dealer, or the manufacturer, who sought termination.

Consider this not unusual scenario. A dealer has been in business for many years. Through poor management, the dealer has, over the years, ordered too many parts and now has a parts

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Ex. 6

1/27/89

department in complete disarray, bloated with useless parts, fully depreciated. Now, the dealer desires to retire. Under this bill, that dealer can elect to terminate and force the manufacturer to repurchase all of his repair parts, regardless of fair market value, at 85% of the current price charged for such items.

This bill also will tend to eliminate the independent after-market suppliers of parts and accessories. Dealers will buy such products only from their franchisors, not from the independent suppliers, as the dealers can demand return at 85% of the purchase price from their franchisors, while the independent supplier would be under no such obligation.

It is apparent that HB 150 is an attempt by the dealers to shift the cost and risk of doing business in the free enterprise system to their manufacturers and distributors. This is grossly unfair, not only to the manufacturer or the distributor, but also to the consumer, who will pay for his anomalous situation with higher prices for the motor vehicle products.

There is no justification for HB 150. The dealers in Montana became dealers voluntarily. In becoming dealers, they did not pay any franchise fee to the manufacturer or distributor for the privilege of becoming a dealer. Accordingly, there is no reason why the motor vehicle dealer should be able to force its supplier (i.e., the motor vehicle dealer manufacturer or distributor), to guarantee the success of its business when all other businessmen assume that risk in the free enterprise system.

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Ex. 6

1/27/89

The MIC respectfully urges you to consider this bill carefully, duly noting that it benefits merely a handful of dealers in Montana, while adversely affecting all of the state's consumers.

A2MTMDR.KVK

(This sheet to be used by those testifying on a bill.)

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 7

DATE 1/27/79

DATE BILL NO. HB 150

NAME: WARREN HOFFMANN

ADDRESS: 1100 CHERRY AVE HELENA

PHONE: 449-7449 or 227-8429

REPRESENTING WHOM? GOLD RUSH CYCLES/HELENA CYCLE CO.

APPEARING ON WHICH PROPOSAL: HB 150

DO YOU: SUPPORT? YES AMEND? _____ OPPOSE? _____

COMMENT: SEE ATTACHED STATEMENT
EXHIBIT #7

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ATTN: GLEN MINOLESTATO

Warren Hoffmann
Representing GOLD RUSH CYCLES
& HELIX CYCLES

PROPONENT

OUR PROBLEMS AS A MOTORCYCLE, SNOWMOBILE AND ATV DEALER ARE VERY SIMILAR TO THE FRANCHISE PROBLEMS THAT AUTOMOBILE AND TRUCK DEALERS HAD WHEN THEIR FRANCHISE AGREEMENTS WERE TERMINATED OR CANCELLED BY A MANUFACTURER OR DISTRIBUTOR. FRANCHISE AGREEMENTS ARE DRAFTED FOR A MANUFACTURER OR DISTRIBUTOR BY THEIR LEGAL COUNSEL AND ARE ONE SIDED FOR THE MANUFACTURER OR DISTRIBUTOR. THE DEALER DOES NOT HAVE EQUAL BARGAINING POWER AND THEREFORE, NEEDS THE FRANCHISE PROTECTION OFFERED IN SECTION 30-11-701 M.C.A. WHICH STATES THAT IF A MANUFACTURER, DISTRIBUTOR, WHOLESALER CANCELS A DEALER, THEY WILL HAVE TO REPURCHASE THE DEALERS INVENTORY AND PARTS.

FOR EXAMPLE:

A. IN EASTERN MONTANA WE HAVE HAD DROUGHT CONDITIONS AND VERY LITTLE SNOWFALL, ← THE LAST 3 YEARS. THEREFORE, SNOWMOBILE SALES HAVE BEEN SLOW. IF A MANUFACTURER OR DISTRIBUTOR FEELS THE DEALER DOES NOT ORDER ENOUGH PRODUCT AND MEET QUOTAS, THEY CAN TERMINATE THE FRANCHISE. WITHOUT THE PROTECTION OF THIS SECTION, WE AS DEALERS WOULD BE STUCK WITH OUR REMAINING NEW INVENTORY AND PARTS. IF A DEALER IS STUCK WITH INVENTORY AFTER BEING CANCELLED BY A MANUFACTURER OR DISTRIBUTOR, IT WOULD BE VERY DIFFICULT TO SELL NEW PRODUCT FROM A POSITION OF NO LONGER BEING A FRANCHISED DEALER FOR THAT PRODUCT. THIS WOULD COMPOUND THE PROBLEM OF GETTING RID OF INVENTORY AND, IN ADDITION, INTEREST AND INSURANCE ON THIS PRODUCT WOULD CONTINUE TIL THE PRODUCTS WERE SOLD. THIS

Ex. #7

1/27/89

CAN BE VERY COSTLY. IF WE WERE AMENDED INTO THIS SECTION AND THE MANUFACTURER OR DISTRIBUTOR CHOSE TO CANCEL THE FRANCHISE, THEY WOULD HAVE TO REPURCHASE INVENTORY AND P. RTS.

B. ANOTHER PROBLEM: A SALES REP FOR A MANUFACTURER OR DISTRIBUTOR CAN ALSO USE MONTANA'S LACK OF FRANCHISE PROTECTION TO THEIR ADVANTAGE TO FORCE A DEALER TO ORDER PRODUCTS BY THREATS OF TERMINATION OR CANCELLATION OF A DEALER FRANCHISE AGREEMENT. THE DEALER KNOWS IF THIS HAPPENS, THE DEALER WILL BE STUCK WITH INVENTORY AND PARTS. I FEEL A DEALER KNOWS BEST WHAT HIS MARKET WILL BEAR AND IF THE DEALER FEELS HE CAN SELL THE PRODUCT, HE WILL ORDER PRODUCT. HE IS IN BUSINESS TO MAKE A PROFIT.

NORTH DAKOTA HAS MOTORCYCLE, ATV, AND SNOWMOBILE REPURCHASE LAWS. IF THE FRANCHISE IS CANCELLED BY THE MANUFACTURER OR DISTRIBUTOR, THE PRODUCTS AND PARTS MUST BE REPURCHASED UNDER TITLE 51, CHAPTER 20, PART 01, NORTH DAKOTA CENTURY CODE.

I FEEL OUR PRODUCTS SHOULD BE AMENDED INTO SECTION 30-11-701 M.C.A., WHICH NOW INCLUDES FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AUTOMOBILES AND TRUCKS. WE ALSO NEED THE PROTECTION OF THIS MONTANA LAW.

Page II

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1/22/89

DATE 1/1/74
Business of Int. 1/1/74

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check	One
			Support	Opp
Maurin Holas	GLENDINE MT.	HB-150	X	
R. M. M. M. M. M.	Boysenman.	HB 150	X	
HARVEY K. MARKEGARD	BILLINGS	HB # 150	X	
Tom Dowling	Montecycle Indusna	150		X
Bob Robinson	Council	HB 129		
GENE PHILLIPS	Winter, Helich, Dorian	HB 130	✓	
Steve TUREKIEWICZ	RVIA	HB 150		X
Larry Anderson	MADA	HB 130		
DEL GAGE	Bliss Cycle Sales, Conrad	HB 150	X	
WARREN HOFFMAN	SENATE	HB 150	X	
Sen. Larry Trout	GOLD RUSH CYCLES HELMUT CYCLE CENTER		X	
	Senate	HB 150	X	

(Please leave prepared statement with Secretary)

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MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on February 3, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer, Senator Boylan, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council;

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 150

Discussion: Chairman Thayer requested Mary McCue to explain the purpose of the saving clause language being inserted into the bill. She said the language was important for making it clear that the act was intended to affect contracts entered into after the act was put into law. The law cannot impair the relationship of existing contracts. The amendments were prepared and submitted to the committee. (See Exhibit #1)

Chairman Thayer submitted letters he had received in support of HB 150 (exhibits 2 and 3)

Amendments and Vote: Senator Lynch moved to Adopt the Amendments. Senator Weeding seconded the motion.

Senator Boylan explained, although the act would include all new contracts, it would also include old contracts if the agreement, to not buy back the inventory, was not excluded. If the old contract specified there would be no buy back, it wouldn't be affected.

The motion to adopt the amendments Carried Unanimously.

Senator Lynch made a motion to change the terms of the parts and inventory buy back, from three years to one year. The motion was seconded by Senator Williams.

Senator Lynch stated he agreed, there were some bad things happening to some dealers, and Yamaha seemed to be the one manufacturer causing the most problems. He thought the three years possibly added to the negative business atmosphere, and one year would send the necessary message.

Senator Boylan thought three years was more realistic protection for the dealers.

Senator Noble said he agreed with Senator Boylan. He said a large R.V. dealer had told him the purchase agreement, required by manufacturers, was cash before delivery. They don't buy unnecessary parts. He thought the three year clause was reasonable.

Senator Weeding said, with his understanding of the requirements of acquiring a recreation vehicle franchise, three years didn't seem unrealistic.

Chairman Thayer said he supported an amendment allowing the buy back to be enacted upon the manufacturer or distributor cancelled the franchise, but not if the dealer cancelled. He said he felt the three year term was satisfactory.

Senator Williams made a Substitute Motion to Amend HB 150 to read two years rather than three. Senator Lynch seconded the motion. The vote was six in favor, and three opposed. Those opposed were Senators Boylan, Weeding, and Senator Thayer. The Motion Carried.

Recommendation and Votes: Senator Meyer made a motion HB 150 BE CONCURRED IN AS AMENDED. Senator Boylan seconded the motion.

Senator Williams expressed concern over allowing dealers to decide to quit selling a product and making the manufacturer purchase their inventory. Mary McCue stated, that change would affect people who had not been notified of a codification change, and therefore would not have been unable to respond. She said that exceeded the realm of the bill.

Senator Lynch said he felt the motion should be voted as presented, because the problems would either surface, or the bill would work.

The Question was called for, and HB 150 was CONCURRED IN AS AMENDED. T motion Carried Unanimously. Senator Lynch agreed to carry HB 150 on the Senate floor, if the sponsor didn't have someone designated.



ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 2/3/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

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Amendments to House Bill No. 150
Third Reading Copy

For the Committee on Business and Industry

Prepared by Mary McCue
February 3, 1989

1. Page 3, following line 22.
Insert:

"Section 2. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not ~~resaleable~~ resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract, if the inventory relates to goods under 30-11-701(4)(a) through 30-11-701(4)(c);

(10) any inventory item, other than a repair part, that has been stocked for 24 months or more prior to notice of termination of the contract if the inventory relates to goods under 30-11-701(4)(d) through 30-11-701(4)(g);

~~(10)~~ (11) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

~~(11)~~ (12) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

ex #1
2/3/89

Renumber: subsequent section

6X

BOSCARINO'S FAMILY R.V. CENTER

4020 Hwy. 93 N.
Stevensville, "Y" MT 59870
(406) 777-2572
FAX-777-5714

February 2, 1989

Re: House Bill #150 Committee members

Cene Thayer
Darrell Meyer
Gerry Noble
Paul Boylan
J.D. Lynch
Tom Hager
Cecil Weeding
Harry "Doc" McLain
Bob Williams

I ask your support in recommending the above bill be passed. It is my belief that the protection this bill would provide could greatly benefit family-owned businesses such as ours by being less at the mercy of out-of-state manufacturers who at the present time carry a very "large stick", calling "the shots" at will.

Sincerely,

Hazel Boscarino
Hazel Boscarino

1/28/89

SENATE BUSINESS & INDUS

EXHIBIT NO. 3

DATE 2/3/89

BILL NO HB 150

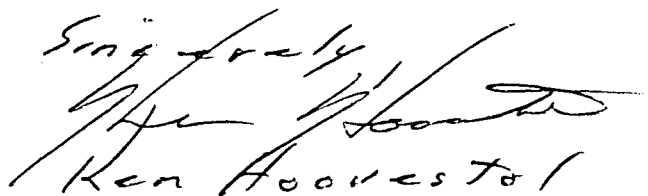
Sen. Gene Thayer, Chairman
Business & Industry Committee
Room 410 Capital Building
Capitol Station
Helena, MT. 59620

Dear Senator,

The Montana Snowmobile Association
Urges your support of HB-150.

We feel this Bill will strengthen
our Dealers and thus provide better
and more reliable service to the
Montana Snowmobiling public.

Your support of HB-150 will
be appreciated.

Sincerely,

Ken Hoovestol

WR 761-2811, hm 727-8368

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ROLL CALL VOTE

SENATE COMMITTEE BUSINESS & INDUSTRY

Date February 3, 1989 Bill No. HB 150 Time 10:19

NAME	SEAT NO.	YES	NO
SENATOR DARRYL MEYER	35	✓	
SENATOR PAUL BOYLAN	50		✓
SENATOR JERRY NOBLE	34	✓	
SENATOR BOB WILLIAMS	39	✓	
SENATOR TOM HAGER	42	✓	
SENATOR HARRY "DOC" MC LANE	33	✓	
SENATOR CECIL WEEDING	28		✓
SENATOR JOHN "J.D." LYNCH	5	✓	
SENATOR GENE THAYER	23		✓

Carla M. Turk
Secretary, CARLA TURK

Gene Thayer
Chairman, GENE THAYER

Motion: Senator Williams made a Substitute Motion
to Amend HB 150 to read 'two years' rather than
three. Senator Lynch Seconded.

2/3/89

Business & Industry

VISITORS' REGISTER

[illegible]

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SENATE STANDING COMMITTEE REPORT

February 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 150 (third reading copy -- blue), respectfully report that HB 150 be amended and as so amended be concurred in:

Sponsor: Johnson (Tveit)

1. Page 3, following line 22.

Insert:

"Section 2. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not ~~resaleable~~ resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract, if the inventory relates to goods under 30-11-701(4)(a) through 30-11-701(4)(c);

(10) any inventory item, other than a repair part, that has been stocked for 24 months or more prior to notice of termination of the contract if the inventory relates to goods under 30-11-701(4)(d) through 30-11-701(4)(g);

~~+(10)+~~ (11) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

~~+(11)+~~ (12) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor."

SENATE

continued

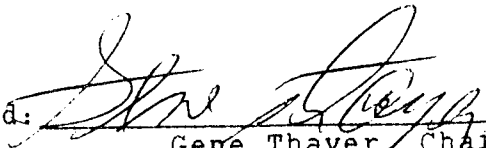
scrhb150.206

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Renumber: subsequent section

AND AS AMENDED BE CONCURRED IN

Signed:


Gene Thayer Chairman

HOUSE BILL NO. 150

INTRODUCED BY JOHNSON, TVEIT, GILBERT,

ABRAMS, BLAYLOCK, COHEN, WALLIN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPURCHASE OF THE INVENTORY OF CANCELED DEALERSHIPS IN MOTORCYCLES, MOTOR-DRIVEN CYCLES, RECREATIONAL VEHICLES, QUADRICYCLES, SNOWMOBILES, OFF-HIGHWAY VEHICLES, AND BOATS AND ENGINES; AND AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last

available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair

1 parts;
 2 (f) off-highway vehicles, as defined in 23-2-801, and
 3 repair parts; and
 4 (g) vessels, as defined in 23-2-502, detachable motors
 5 or engines used to propel vessels, and repair parts.
 6 (5) "Net cost" means:
 7 (a) with respect to a dealership contract, the price
 8 actually paid for an inventory item by the retailer to the
 9 wholesaler, manufacturer, or distributor, plus applicable
 10 freight costs paid by or charged to the retailer; and
 11 (b) with respect to a distribution contract, the price
 12 actually paid for an inventory item by the wholesaler to a
 13 manufacturer or distributor, plus applicable freight costs
 14 paid by or charged to the wholesaler.
 15 (6) "Retailer" or "retail dealer" means any
 16 individual, partnership, association, or corporation engaged
 17 in the business of selling inventory, as defined in this
 18 section, to the general public.
 19 (7) "Wholesaler" means any individual, partnership,
 20 association, or corporation engaged in the business of
 21 selling inventory, as defined in this section, to
 22 retailers."
 23 **SECTION 2. SECTION 30-11-703, MCA, IS AMENDED TO READ:**
 24 **"30-11-703. Excepted inventory. The following**
 25 **inventory is not subject to the repurchase requirements of**

1 ~~30-11-702:~~
 2 ~~(1) any repair part that has a limited storage life or~~
 3 ~~is otherwise subject to deterioration, such as rubber items,~~
 4 ~~gaskets, or wet charge batteries;~~
 5 ~~(2) any repair part that is in a broken or damaged~~
 6 ~~package;~~
 7 ~~(3) any single repair part that is priced as a set of~~
 8 ~~two or more items;~~
 9 ~~(4) any repair part that because of its condition is~~
 10 ~~not resalable resalable as a new part without repackaging~~
 11 ~~or reconditioning;~~
 12 ~~(5) any inventory for which the retailer is unable to~~
 13 ~~furnish evidence satisfactory to the wholesaler,~~
 14 ~~manufacturer, or distributor of title, free and clear of all~~
 15 ~~claims, liens, and encumbrances;~~
 16 ~~(6) any inventory the retailer desires to keep, if he~~
 17 ~~has a contractual right to do so;~~
 18 ~~(7) any inventory item other than a repair part that~~
 19 ~~is not in essentially new, unused, undamaged, and complete~~
 20 ~~condition;~~
 21 ~~(8) any repair part that is not in new, unused, or~~
 22 ~~undamaged condition;~~
 23 ~~(9) any inventory item, other than a repair part, that~~
 24 ~~has been stocked for 36 months or more prior to notice of~~
 25 ~~termination of the contract, if the inventory relates to~~

goods-under-30-11-701(4)(a)-through-30-11-701(4)(c);

(10)-any-inventory-item, other-than-a-repair-part, that

has--been--stocked--for-24-months-or-more-prior-to-notice-of

termination-of-the-contract--if--the--inventory--relates--to

goods-under-30-11-701(4)(d)-through-30-11-701(4)(g);

(10)(11)-any-inventory-that-was-ordered-by-the-retailer

after--the--date--of--notification--of--termination--of--the

contract; and

(11)(12)-any--inventory--that--was--acquired--from--any

source---other---than---the---wholesaler, manufacturer, or

distributor."

NEW SECTION. SECTION 2. SAVING CLAUSE. [THIS ACT]

DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES

THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE

[THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT]

IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

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